

Assembly Bill No. 1741

Passed the Assembly May 22, 2003

Chief Clerk of the Assembly

Passed the Senate September 2, 2003

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 8102, 8103, 8104, and 13563 of, and to add and repeal Section 6487.06 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1741, Committee on Revenue and Taxation. Taxation: deficiencies, refunds, and interest.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. The State Board of Equalization administers the application of, and the collection of, the taxes imposed by that law. Existing law provides for an 8-year statute of limitations for the collection of use taxes that are not reported under that law. Existing law provides for a 3-year statute of limitations in the case of an unregistered out-of-state retailer that voluntarily registers with the State Board of Equalization, if a determination is made that the failure to report and pay the tax was due to reasonable cause.

This bill would, until January 1, 2006, in the case of a qualified purchaser, limit the statute of limitations to 3 years for the collection of unreported use taxes on specified purchases, if a determination is made that the failure to report and pay the tax was due to reasonable cause. This bill would also require the State Board of Equalization to submit a report to the Legislature before January 1, 2005, regarding the use, impact, and viability of these provisions.

The Motor Vehicle Fuel License Tax Law provides for certain refunds upon submission of original purchase invoices to the Controller.

This bill would allow the submission of other evidence of each purchase that is satisfactory to the Controller, and require the claimant to maintain that evidence for 4 years after the issuance of a refund. This bill would also make conforming changes by deleting references to the acceptance of electronic invoicing in situations where no original invoice was created.

Existing law prohibits the imposition of any tax on, or by reason of, any transfer occurring by reason of death, but imposes a



California estate tax equal to a certain portion of the maximum allowable amount of credit for state death taxes allowable under the applicable federal estate tax law. Existing law also specifies the applicable interest payable on delinquent amounts or overpayments of tax.

This bill would provide that interest is allowed from the date on which payment would have become delinquent, if not paid, or the date of actual payment, whichever is later in time, to the date preceding the date of the refund warrant by not more than 30 days, as determined by the Controller.

The people of the State of California do enact as follows:

SECTION 1. Section 6487.06 is added to the Revenue and Taxation Code, to read:

6487.06. (a) Notwithstanding Section 6487, the period during which a deficiency determination may be mailed to a qualifying purchaser is limited to the three-year period beginning after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

(b) For purposes of this section, a “qualifying purchaser” is a person that voluntarily files an Individual Use Tax Return for tangible personal property that is purchased from a retailer outside of this state for storage, use, or other consumption in this state, and that meets all of the following conditions:

(1) The purchaser resides or is located within this state and has not previously done either of the following:

(A) Registered with the State Board of Equalization.

(B) Filed an Individual Use Tax Return with the State Board of Equalization.

(2) The purchaser is not engaged in business in this state as a retailer, as defined in Section 6015.

(3) The purchaser has not been contacted by the State Board of Equalization regarding failure to report the use tax imposed by Section 6202.

(4) The State Board of Equalization has made a determination that the purchaser’s failure to file an Individual Use Tax Return or to otherwise report, or pay the use tax imposed by Section 6202 was due to reasonable cause and was not caused by reason of



negligence, intentional disregard of the law, or by an intent to evade the taxes imposed by this part.

(c) If the State Board of Equalization makes a determination that the purchaser's failure to timely report or remit the taxes imposed by this part is due to reasonable cause or due to circumstances beyond the purchaser's control, the purchaser may be relieved of any penalties imposed by this part. Any purchaser seeking relief from penalties imposed by this part shall file a statement, signed under penalty of perjury, setting forth the facts that form the basis for the claim for relief.

(d) This section shall not apply to purchases of vehicles, vessels, or aircraft as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.

(e) The State Board of Equalization shall submit to the Legislature before January 1, 2005, a report that includes the following information:

(1) The number of qualifying purchasers who received the benefits afforded by this section.

(2) The amount of use tax revenue received by the state from the qualifying purchasers described in paragraph (1).

(3) Recommendations for modifying, eliminating, or continuing the operation of, any or all of the provisions of this section.

(f) This section shall remain in effect only until January 1, 2006, and as of that date is repealed.

SEC. 2. Section 8102 of the Revenue and Taxation Code is amended to read:

8102. (a) The claimant of a refund shall present to the Controller a claim supported by the original invoice showing the purchase or other evidence of each purchase that is satisfactory to the Controller. The claim shall state the total amount of the fuel purchased by the claimant and the manner and the equipment in which the claimant has used the fuel. The claim shall state the total amount of motor vehicle fuel covered by the claim and if the motor vehicle fuel was exported, a statement that the claimant has proof of exportation. The claim shall state that the amounts claimed have not been previously refunded to the claimant and that there are no other claims outstanding for the amounts included in the current claim for refund. The claim shall not be under oath but shall contain, or be accompanied by, a written declaration that it is made



under the penalties of perjury. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

(b) Each claim for refund under this section shall be made on a form prescribed by the Controller and shall be filed for a calendar year, except for claims relating to exportation of fuel. If, at the close of any of the first three quarters of the calendar year, more than seven hundred fifty dollars (\$750) is refundable under this section with respect to any motor vehicle fuel used, sold, or exported during that quarter or any prior quarter during the calendar year, and for which no other claim has been filed, a claim may be filed for the quarterly period. To facilitate the administration of this section, the Controller may require the filing of claims for refund for other than yearly periods. Export claims may be filed at any time.

SEC. 3. Section 8103 of the Revenue and Taxation Code is amended to read:

8103. The Controller, upon the presentation of the properly completed claim and the invoice or other evidence of each purchase that is satisfactory to the Controller, shall cause to be paid to the claimant from the taxes collected under this part an amount equal to the taxes collected on the motor vehicle fuel in respect to which the refund is claimed.

SEC. 4. Section 8104 of the Revenue and Taxation Code is amended to read:

8104. In order to establish the validity of any claim the Controller may, upon demand, examine the books and records of the claimant for that purpose. The failure of the claimant to accede to that demand constitutes a waiver of all right to the refund claimed on account of the transactions questioned. The examination may be made either through employees of the office of the Controller or of the office of the board. Supporting evidence of all purchases included in a claim for refund shall be maintained by the claimant for inspection by the Controller or the office of the board for four years after the date of refund.

SEC. 5. Section 13563 of the Revenue and Taxation Code is amended to read:



13563. (a) For purposes of determining interest on overpayments for periods beginning before July 1, 2002, interest shall be allowed and paid upon any overpayment of tax due under this part in the same manner as provided in Sections 6621(a)(1) and 6622 of the Internal Revenue Code.

(b) For purposes of determining interest on overpayments for periods beginning on or after July 1, 2002, interest shall be allowed and paid upon any overpayment of tax due under this part at the lesser of the following:

(1) Five percent.

(2) The bond equivalent rate of 13-week United States Treasury bills, determined as follows:

(A) The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of January shall be utilized for determining the appropriate rate for the following July 1 to December 31, inclusive.

(B) The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of July shall be utilized for determining the appropriate rate for the following January 1 to June 30, inclusive.

(c) For purposes of subdivision (b), in computing the amount of any interest required to be paid by the state, that interest shall be computed as simple interest, not compound interest. That interest shall be allowed from the date on which payment would have become delinquent, if not paid, or the date of actual payment, whichever is later in time, to the date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the Controller.



Approved _____, 2003

Governor

